

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Case No. 03-38286 GFK  
Chapter 7

Lowell B. Gieseke and  
Debra Kay Gieseke,

Debtors.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

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TO: Debtors Lowell B. Gieseke and Debra Kay Gieseke; their attorney Laurence Stratton;  
United States Trustee; and all other entities specified in Local Rule 1204 (a):

1. DaimlerChrysler Services North America, L.L.C., successor in interest to Chrysler Financial Company, L.L.C., ("DCS"), a secured creditor in this Chapter 7 proceeding, by and through duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.

2. The Court will hold a hearing on this motion on **October 25, 2004, at 10:30 a.m.**, before the Honorable Gregory F. Kishel, United States Bankruptcy Judge, in Courtroom No. 228b, 200 Federal Building, 316 North Robert Street, St. Paul, MN 55101.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on December 10, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. DCS requests relief from the automatic stay under § 362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtors as defined below.

6. On April 15, 2002, the debtors, Lowell Gieseke and Debra Gieseke, executed a promissory note and security agreement in favor of DCS, in the original principal amount of \$36,138.66, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, a 2002 Jeep Grand Cherokee, VIN # 1J4GW58N22C214638. Proof of perfection of the security interest of DCS is attached hereto as **Exhibit "B"**.

7. The promissory note is in default for failure to make payments when due since May 15, 2004, a delinquency in the approximate amount of \$3,168.10. As of December 10, 2003, the amount due was a payoff balance of approximately \$28,382.37. On information and belief, the value of the vehicle is \$21,400.00 and the debtors have no equity in the vehicle.

8. The loan is in default for failure to make payments when due. DCS seeks relief from the automatic stay to foreclose its personal property security interest in the vehicle.

9. Pursuant to 11 U.S.C. § 362(d)(1), a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. DCS believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:

- a. DCS has not been offered and is not being provided with adequate protection for its interest in the vehicle;
- b. The vehicle subject to the security interest of DCS continues to depreciate and decline in value;
- c. DCS has been unable to verify current proof of insurance on the vehicle; and
- d. The debtors have stopped making payments to DCS.

10. Pursuant to 11 U.S.C. § 362(d)(2), a creditor may be granted relief from the automatic stay, if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtors have no equity in the vehicle that is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 7 proceeding.

11. If any testimony is necessary on any of the facts relative to this motion, testimony will be given by Joseph Quigley, or some other representative of the Movant, DaimlerChrysler Services North America, L.L.C., successor in interest to Chrysler Financial Company, L.L.C., whose address is 400 Horsham Road, Horsham, PA 19044.

WHEREFORE, DCS requests entry of an Order granting the relief from the automatic stay of 11 U.S.C. § 362, to allow it to foreclose its personal property security interest described above, and for such other and further relief as the court deems just and equitable under the circumstances.

Dated: October 12, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn  
Marilyn J. Washburn, #0324140  
7700 Bonhomme Ave., 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
FAX (314) 727-1086  
Attorneys for DCS

54-291-2008 (12/01) NA  
**RETAIL INSTALLMENT CONTRACT**  
**MINNESOTA - SIMPLE INTEREST**

DATE **4-15-02** ACCOUNT NUMBER

BUYER (AND CO-BUYER) NAME AND ADDRESS  
**Lowell Gieseke and Debra Gieseke**  
**Box 503 1333 1st Ave**  
**Gibbon MN 55335**

DATE **APR 19 2002**

CREDITOR (SELLER) NAME AND ADDRESS  
**Maday Motors Inc.**  
**2403 S. Broadway**  
**New Ulm MN 56073**

Creditor ("us" and "we") agrees to sell, and buyer and co-buyer, if any, (collectively "Buyer", "You" and "Your") after being quoted both a cash and credit price, agrees to buy from Creditor on a credit price basis ("Total Sale Price"), subject to the terms and conditions set forth on both the front and back of this contract, the vehicle ("Vehicle") described below. You acknowledge delivery and acceptance of the Vehicle.

DESCRIPTION OF VEHICLE  
 NEW ☒ USED ☐ **2002 Jeep Grand Cherokee** VIN **1J4GW58N2C214638** Year & Make **02 Jeep** Model **Liberty**

**FEDERAL TRUTH IN LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of Your credit as a yearly rate. <b>8.0 %</b>	The dollar amount the credit will cost You. <b>\$ 9493.98</b>	The amount of credit provided to You or on Your behalf. <b>\$ 36138.66</b>	The amount You will have paid after You have made all payments as scheduled. <b>\$ 45620.64</b>	The total price of Your purchase on credit, including Your down payment of <b>\$ 1494.31</b> <b>\$ 47114.95</b>

**Payment Schedule** - Your payment schedule will be...

NO. OF PAYMENTS	AMOUNT OF EACH PAYMENT	WHEN PAYMENTS ARE DUE		NO. OF PAYMENTS	AMOUNT OF EACH PAYMENT	WHEN PAYMENTS ARE DUE	
		<input checked="" type="checkbox"/> MONTHLY (BEGINNING DATE OF PAYMENT)	<input type="checkbox"/> MONTHLY (BEGINNING DATE OF PAYMENT)			<input type="checkbox"/> MONTHLY (BEGINNING DATE OF PAYMENT)	<input type="checkbox"/> MONTHLY (BEGINNING DATE OF PAYMENT)
<b>72</b>	<b>\$ 633.82</b>	<b>5-15-02</b>					

**Prepayment.** If You pay off early, You will not have to pay a penalty.

**Security Interest.** You are giving us a security interest in the Vehicle being purchased.

**Filing Fees** \$ **2.00**

**Contract Provisions.** See the back of this contract for any additional information about security interests, nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

**\*E means Estimate**

**1. Cash Price**

- Vehicle (including accessories, delivery, installation charges, if any) **36579.52**
- Sales Tax **580.85**
- Documentary Fee **25.00**
- Service Contract (optional)
- Cash Price (1a + 1b + 1c + 1d) **\$ 37185.47**

**2. Downpayment**

- Downpayment
- Manufacturer's Rebate **3000.00**
- Gross Allowance on Trade-in **\$ 24600.00**
- Pay-off on Trade-in **\$ 26105.69**
- Net Allowance on Trade-in (2c - 2d) **-1505.69**
- Downpayment (2a + 2b + 2e) **\$ 1494.31**  
If less than \$0, disclose on Line 3a and enter \$0 for the Downpayment.

**3. Unpaid Balance of Cash Price (1a - 2b)** **\$ 35691.16**

- Unpaid Trade-in Lien Amount to be Financed \*\*  
\*\* Paid to:

**4. Other Charges Including Amounts Paid to Others on Your Behalf\***

- Paid to Public Officials for:
  - Other Taxes **2.00**
  - Filing Fees **2.00**
  - License Fees **16.50**
  - Certificate of Title Fees **429.00**
  - Registration Fees
- Paid to:
- Paid to:
- Paid to:
- Paid to:
- Paid to:

**5. Paid to Insurance Companies for Insurance for:\***

- Optional Mechanical Breakdown
- Optional Credit Life
- Optional Credit Accident & Health

**g. Subtotal (4a + 4b + 4c + 4d + 4e + 4f)** **\$ 447.50**

**6. Amount Financed (3 + 3a + 4g)** **\$ 36138.66**

**\*Seller may receive and retain a portion of certain of these amounts.**

**YOU ARE REQUIRED TO HAVE PHYSICAL DAMAGE INSURANCE. LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT. YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE.**

**CREDIT LIFE, CREDIT DISABILITY, GUARANTEED AUTOMOTIVE PROTECTION COVERAGE AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.**

<input type="checkbox"/> <b>CREDIT LIFE</b> PREMIUM \$ INSURER INSURED(S) BUYER'S SIGNATURE CO-BUYER'S SIGNATURE	<input type="checkbox"/> <b>MECHANICAL BREAKDOWN</b> TERM PREMIUM \$ INSURER INSURED(S) BUYER'S SIGNATURE CO-BUYER'S SIGNATURE
<input type="checkbox"/> <b>CREDIT DISABILITY</b> PREMIUM \$ INSURER INSURED(S) BUYER'S SIGNATURE CO-BUYER'S SIGNATURE	<input type="checkbox"/> <b>TYPE</b> TERM PREMIUM \$ INSURER INSURED(S) BUYER'S SIGNATURE CO-BUYER'S SIGNATURE

**Primary Use of Vehicle** - You agree to use the Vehicle primarily for personal, family or household purposes. However, if the following box is checked, You will use the Vehicle primarily for business or commercial purposes. ☐

**CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT, INCLUDING IMPORTANT ARBITRATION DISCLOSURES AND PRIVACY POLICY ON THE BACK OF THIS CONTRACT.**

**Notice to the Buyer:** 1. Do not sign this contract before You read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract You sign. Keep it to protect Your legal rights. **BUYER ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS CONTRACT.**

**IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.**

SIGNATURE OF BUYER **Lowell Gieseke** SIGNATURE OF CO-BUYER **Debra Gieseke** SIGNATURE OF CO-BUYER

**THIS CONTRACT IS ACCEPTED BY THE CREDITOR (SELLER) AND ASSIGNED TO DaimlerChrysler Services North America L.P. (ASSIGNEE) IN ACCORDANCE WITH THE TERMS OF THE ASSIGNMENT SET FORTH ON THE REVERSE HEREOF.**

CREDITOR (SELLER) **Maday Motors Inc.** BY **Ann S. Sola** TITLE **Ann S. Sola**

EXHIBIT

tabbies



1008096882

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

GIESEKE LOWELL BERNARD OR  
GIESEKE DEBRA KAY  
1333 1ST AVE BOX 503  
GIBBON MN 55335

JBU087

Year <b>02</b>	Make <b>JEEP</b>	Model <b>4WGCK</b>	Title NR. <b>H1340P251</b>
VIN <b>1J4GW58N22C214638</b>		Security Date <b>04/15/02</b>	Rebuilt <b>NO</b>

1ST SECURED PARTY

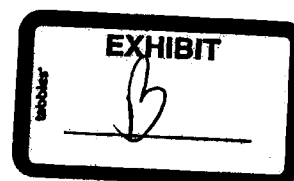
**LIEN HOLDER**

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

DAIMLERCHRYSLER SERVICES  
NORTH AMERICA LLC  
PO BOX 600  
HORSHAM PA 19044-0600

MAY 21 2002

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Case No. 03-38286 GFK

Chapter 7

Lowell B. Gieseke and  
Debra Kay Gieseke,

Debtors.

**VERIFICATION**

I, JOSEPH M. QUIGLEY, an employee of DaimlerChrysler Services North America, L.L.C. named in the foregoing Notice of Hearing and Motion for Relief from Stay, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

DATED: 10/11, 2004

SIGNED:

Joseph M. Quigley



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

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Debtors.

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**MEMORANDUM OF LAW**

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**INTRODUCTION**

DaimlerChrysler Services North America, L.L.C. successor in interest to Chrysler Financial Company, L.L.C. ("DCS") has made a motion for relief from the automatic stay. DCS incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan that is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due and DCS has been unable to verify current proof of insurance. DCS seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

**ARGUMENT**

Pursuant to 11 U.S.C. § 362(d)(1), a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. The motion, filed by DCS, for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the automatic stay. **United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re Timbers of Innwood Assoc. Ltd)**, 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle that is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. §362(d)(2). **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

### **CONCLUSION**

Based on the foregoing, DCS requests that the Court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. §362(a) to permit DCS to enforce and foreclose its personal property security interest.

DATED: October 12, 2004

RIEZMAN BERGER, P.C.

**/s/ Marilyn J. Washburn**  
Marilyn J. Washburn, #0324140  
7700 Bonhomme Ave., 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
FAX (314) 727-1086  
Attorneys for DCS

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme Avenue, 7<sup>th</sup> Floor, St. Louis, Missouri 63105, declares that, on the date listed below, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law and Proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class postage prepaid and depositing same in the post office at St. Louis, Missouri, addressed to each of them as follows:

(Debtor)  
Lowell B. Gieseke  
1333 1st Avenue  
Gibbon, MN 55335

(Chapter 7 Trustee)  
Paul W. Bucher  
PO Box 549  
Rochester, MN 55903

(Debtor)  
Debra Kay Gieseke  
1333 1st Avenue  
Gibbon, MN 55335

Office of the U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

(Debtor's Attorney)  
Laurence Stratton  
Muske Muske & Suhrhoff  
PO Box 143  
Springfield, MN 56087

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: October 12, 2004

Signed: /e/Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

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**ORDER**

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The above entitled matter before the Court for hearing on \_\_\_\_\_, 2004, on the motion of DaimlerChrysler Services North America, L.L.C., successor in interest to Chrysler Financial Company, L.L.C. ("DCS"), seeking relief from the automatic stay of 11 U.S.C. § 362(a). Appearances are as noted in the Court's record.

Based on the proceedings had on said date, the statement of counsel and all the files and records herein, the Court now find that cause exists entitling DCS to relief from the automatic stay.

NOW, THEREFORE, **IT IS HEREBY ORDERED** that:

1. The automatic stay is immediately terminated as to DCS and DCS is authorized to proceed with its legal remedies according to state law as to the subject motor vehicle, a 2002 Jeep Grand Cherokee, VIN # 1J4GW58N22C214638.
2. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

DATED at St. Paul, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY THE COURT:

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Gregory F. Kishel  
United States Bankruptcy Judge